FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/AOM/2015/0012**
Property	**:**	**Canary Riverside, Westferry Circus, London, E14.**
Applicant	**:**	**Various Leaseholders of Canary Riverside.**
Representative	**:**	**In person and at the hearing** **Ms. A. Gourlay of Counsel.**
Respondent	**:**	**Octagon Overseas Limited and Canary Riverside Estate Management Limited**
Representative	**:**	**Messrs Eversheds and at the hearing** **Mr. M. Sefton of Counsel.**
Type of application	**:**	**An application under section 24 of the Landlord & Tenant Act 1987.**
Tribunal members	**:**	**1. Ms. A. Hamilton-Farey.** **2. Mr. L. Jarero BSC FRICS**
Date and venue of hearing	**:**	**17 – 23 May 2016 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**5 August 2016**

DECISION

DECISION:

1. The tribunal appoints Alan Coates MIBFM MIRPM of Messrs H M L Andertons as manager (the "Manager"), of the residential leasehold properties at Canary Riverside, for a period of three years with effect from 1 October 2016, subject to payment on account by at least 70% of the applicants to this application by 1 September 2016, the sum of 50% of the service charge budget provision, for the year 2015/16 as contained in the accounts provided to the tribunal in these proceedings.

2. The duties of the manager are contained within the amended Management Order. The applicants shall provide an amended version of the Order to the tribunal on or before 31 August 2016 for the tribunal's approval.

3. The respondents' managers and freeholder shall provide to the Manager by the end of August 2016, all documents, including schedule of tenancies, arrears, contracts (including those in relation to the on-site staff provisions, repairs and maintenance and servicing contracts), details of bank accounts and balances (including the reserve accounts) and a fully reconciled set of service charge accounts to that date.

4. For the avoidance of doubt, the Manager shall not be entitled to conduct or pursue litigation in relation to the Circus Apartment properties, nor shall he have the power to grant licences to alter or assign, without permission from the freeholder first being obtained in writing.

The application:

5. On or around 14 May 2014 the applicants served a notice under section 22 of the Landlord and Tenant Act 1987 on the landlord stating that they would make an application to this tribunal unless the landlord made good certain deficiencies identified in that notice. In particular the applicants alleged that:-

    - the landlord was in breach of obligations owed to the tenants under the leases.
    - the landlord was in breach of the Royal Institution of Chartered Surveyors Service Charge Residential Management Code ("the RICS Code").
    - the landlord has made and/or proposed unreasonable service charges.
    - that other circumstances existed which made it just and convenient for a manager to be appointed;

6. The schedules attached to the notice identified in more detail the various areas of the RICS code that the applicants considered had been breached by the landlord.

7. Directions were issued by the tribunal to bring this matter to hearing between the 17th and 23rd of May prior to which the parties exchanged bundles of documents on which they wish to rely, including witness statements of witnesses to be called at the hearing.

8. The applicant's proposed that Mr Alan Coates of HML Andertons be appointed The Manager and Receiver of the Estate, and a proposed Management Order was appended to that Notice and the application to the tribunal. A revised Management Order was submitted by the applicants, this removed from the application that Mr. Coates be appointed manager of the commercial elements of the development, which had been opposed by the respondents. The respondents opposed the application for appointment and said that the management of the estate had improved since the service of the S.22 Notice, a fact they say that had been acknowledged by the applicants and that the respondents should be given the opportunity to continue with those improvements, to the benefit of all residents, some of whom had not joined in these proceedings.

The Inspection:

9. The tribunal would wish to thank the parties for the time taken to provide the very full access to the buildings during the inspection. We do not however intend to rehearse all of the findings, except where relevant for the purposes of this decision.

10. We did note however, that the common parts were in a generally used and tired condition, with repairs to hallway carpeting, marks to walls and a broken table in the entrance to one block. The tribunal considered that the condition was not commensurate with what one would expect of a development of this type and in this prime London location, even taking into consideration the age of the building.

Absolute perfection;

11. The applicants produced the original marketing brochure for the development entitled 'Absolute Perfection' and it was their case that the reality has fallen short of the promises made in that document.

12. Although we have read that document, we consider that at the time the application was made, and given the various changes that have taken place, including the change of both freeholder and managing agents, and the fact that marketing details themselves do not form part of any leasehold contract, that the document has been overtaken by events. We accept however that those leaseholders who purchased shortly after handover from the developer may have relied on it more than those who purchased at a later stage.

Background to the management:

13. It is not denied by any of the parties to this application that there have been both changes in freeholder and managers/managing agents for this

development, and that previous litigation had been undertaken by various parties in the past, including at least one application for the appointment of a manager. It was also brought to the tribunal's attention that the proposed Manager, Mr. Coates, had previously been a manager of the estate, although he had not disclosed this to the tribunal in his statement.

14. In 2009 a differently constituted tribunal (the Andrew tribunal), concluded that as the managing agents had recently changed to Lee Baron, and they appeared to be taking steps to remedy the faults raised by the leaseholders that, an Order should not be made and Lee Baron should be given the chance to prove themselves. One of the issues that the Andrew tribunal considered was receiving attention was the problem with the leaking windows.

The Current Management:

Mr. Paul:

15. At some stage after the Andrew decision had been issued, Canary Riverside Estate Management ("CREM") dispensed with the services of Lee Baron and instead formed Marathon Estates Limited ("MEL") as a special vehicle to manage both Canary Riverside (CR) and West India Quay (WIQ).

16. Mr. Paul informed the tribunal that he was approached by Mr. Cristodoulou, of the Yiannis Group (owners of the beneficial interest in the estate) to see if he was interested in managing the properties at CR and WIQ. The only criteria for any appointment appeared to be that the management should be undertaken for a lesser fee than other agents who had been approached.

17. Mr. Paul informed us that his main occupation was as a chartered accountant, specialising in debt restructuring, the film and entertainment industry. He also managed property from a tax aspect, the restructuring and business management of property, but not as a property manager with hands on experience. He confirmed that he had never personally acted as a property manager.

18. Having been approached by the freeholder, Mr. Paul said that he had not been made aware of the problems with Lee Baron ("LB"), and it was not until further into discussions that these were brought to his attention. The main issue from the freeholders' point of view was that LB appeared to be incapable of producing the accounts, and their general competency to manage the estate was called into question.

19. Mr. Paul also confirmed that no maintenance matters had been brought to his attention prior to his taking up the appointment. Similarly, he was not aware of how certain residents viewed the maintenance of the estate until after appointment.

20. Mr. Paul also confirmed that he had been made aware of the Andrew decision and the satisfaction of that tribunal with LB's performance and the significant improvements that had been made to the estate since their

appointment. For example, they had produced the accounts and started consultation with the leaseholders regarding the chiller works, and that on the face of it, it appeared that LB were not as actually 'as bad as all that'. Mr. Paul confirmed that he was only repeating the landlord's view of LB, but confirmed that he had not spoken to any residents.

21. With regard to the accounts, leases and problems with chillers/windows Mr. Paul said that he had not been made aware of these prior to his appointment, but learned of the difficulties afterwards.

22. He said that the landlord had some concerns about LB's management, and some possible mis-use of funds. That these were not complaints made by the leaseholders but those of the landlord. He could not remember specifics and that it was hard to remember what was discussed before and after his appointment.

23. What Mr. Paul did confirm was that the freeholder had approached other managing agents before approaching him. He did not know whether any competitive tendering had taken place, but that he was told his price had to be cheaper than any of the others, and that the freeholder /'would not countenance a revision to the fee subsequently'. He confirmed to the tribunal that he had carried out proper due diligence before taking on the management role.

24. Surprisingly to the tribunal, Mr. Paul confirmed that he did not keep notes of the meetings with the freeholder, that there were no e-mails setting out the terms of the appointment, and it appears that the only criteria was that he maintained his fees at the agreed level.

25. Mr. Paul described his approach to any venture was 'to find the right people for the job' – in his opinion, 'the right people generally do not need managing'. He explained that he had to develop an understanding of the business and this involved him visiting the estate, meeting people, including staff and residents. He did not draw up a business plan for the estate, but insisted that those staff who had previously been on the estate be TUPE'd over into MEL and that the freeholder's problems with the management of the estate was not with the staff on the ground, but with their managers. He expressed regret that MEL experienced the same problems with LB.

26. Mr. Paul had relied on Norman Crawford, the previous property manager; to set up the capital expenditure plan (CAPEX Plan), which he thought was part of the employment contract. It appears that there was no CAPEX plan at that time, but Mr. Paul did not consider that to be particularly relevant. He said that he knew what the revenue was and what the outgoings were and he worked backwards from there to calculate his fee. He was sure that he had prepared a budget, although revised that to not being certain that one had been prepared, but confirmed that he set about all of his investment decisions in the same way.

27. He confirmed that he retained four members of staff from LB and that a further two were employed, including a service charge accountant. He was

asked specifically who the property manager would turn to for advice – and replied that it would be himself – but there would be very few occasions when he would be contacted.

28. It was his opinion that the property managers should be left to make their own decisions, they had enormous experience, if they needed to discuss things they would have conversations with him, and the landlord as appropriate. That he had not made any plans on taking over the management but expected the property manager to do so. He also confirmed that he had given a copy of the contract with CREM to the on-site staff, and as far as he was concerned it was important from the landlord's view that the property manager was carrying out his job.

29. Mr. Paul confirmed that he regularly appraised and reviewed the performance of his staff, but could not recall when he had last done so. No written notes were taken or records made, but that they were informal meetings to discuss jobs with the staff.

30. Having appraised Mr. Crawford, it became apparent that Mr. Crawford had a wish-list of things that he wanted to achieve on the estate, but it was a personal list and not backed up by any expert evidence. Mr. Paul considered that the list was inappropriate, and although Mr. Crawford was as good a manager as one would expect, he was like all people 'not outstanding in all areas'.

31. When asked whether CREM had required that he join ARMA, or that he had knowledge of and would comply with the RICS Code, he confirmed that he knew of the latter, but that there was no requirement that MEL be ARMA registered.

32. He confirmed that the freeholder only gave a limited £5,000.00 expenditure limit and that he had expected to be provided with all necessary working documentation by LB on handover of the management, but that LB had not been helpful on handover, having withheld invoices because they were needed for the accounts to be prepared.

33. Mr. Paul also said that prior to his appointment he had not been given any information regarding the maintenance of the estate, or what the views of the residents were. Although he was aware of the Andrew decision and the satisfaction of that tribunal that LB was making some progress, he could only say what the landlord's opinion of LB was.

34. Mr. Paul also said that he became aware after his appointment that the landlord had some concerns about LB's management and the possibility that funds were being or had been mis-used. Although he was not aware of any leaseholders' complaints, the landlord was dissatisfied. He said that it was hard to remember actually what was or was not discussed at the time and whether those discussions were before or after his appointment.

35. Mr. Paul was quick to praise both Mr. Parojcic and Ms. Berwin, both of whom he considered to be excellent members of his team and he was confident that their previous employment history was an asset to the estate.

Although he accepted that there had been a high turnover of staff, but that people had left for different reasons and presumably therefore that this was not an unusual occurrence in management of this type. He was unable to give any insight into why repairs had taken so long to be completed, and deferred this question to property management.

Louise Berwin:

36. Ms Berwin confirmed to the tribunal that she is actually employed by Westminster Management Services ("WMS") a company set-up by the Yiannis Group to provide consultancy; payroll and HR services to approximately 6,500 staff in the Yiannis Group. She told the tribunal that she had been headhunted by WMS following a decision by Mr. Paul and CREM in 2014. She was brought in to provide assistance and was in the middle between CREM and MEL, both of whom were very busy and she provided another pair of useful hands to both CR and WIQ, although she was unaware of the division of the time she spent on each development. At the time of her appointment she had been made aware of the applicants S. 22 Notice.

37. Ms. Berwin confirmed that she had no involvement with either estate prior to her appointment. She informed the tribunal that she had personally been appointed a manager by a previous tribunal, and that prior to her appointment she had walked around the estate so that she could be confident that her integrity would not be compromised. She confirmed that she had been made aware of the maintenance issues on the estate prior to taking up that appointment; she had been sent the accounts, the PPM and management plan for the estate prior to her interview, and confirmed that during this process she had been made aware of the problems with LB.

38. It was difficult for the tribunal given Ms. Berwin's evidence to see what her role actually was. On the one hand she categorically denied that she managed any of the site, but advised the landlord/management on good practice, but was unaware of whether the bank accounts contained the word 'Client'; nor did she advise management of the requirement to hold separate bank accounts, and that her remit did not extend to checking whether or not bank accounts complied with any requirements.

39. When asked whether her remit did extend to checking invoices, she said that she had an overview by looking through the files to get a feel for what was happening. She did not check purchase order or bank statements.

40. Ms. Berwin confirmed that the PPM had not been disclosed to the lessees and was unaware that an M&E condition survey had been carried out in July 2004. She also had no knowledge of the circumstances surrounding the residents' meetings with Mr. Paul and Mr. Crawford, what the background was and she had not read the minutes produced following those meetings. Ms Berwin was unable to confirm who had commissioned the PPM, but was aware that no such plan existed when the S.22 Notice had been served, and when it was obtained in January 2015 she did not recommend that it be

shared with the lessees, because by that time the S.22 Notice had been served and a 'lot of things were going on in the estate'. When asked to elaborate on these, she referred to the chiller works that were due to start in January 2015, for which a supplementary demand had been issued and works to one of the busbars were being undertaken; otherwise she was unaware of any major works with only the usual general maintenance being undertaken.

41. Although Ms. Berwin said that she was involved in the review of the budget, she did not prepare it. She was aware that the money for the chillers had been ring-fenced but on further questioning, accepted that it was difficult for leaseholders to see how the chillers were to be paid for, because the money had disappeared from the budget.

42. She also confirmed that the budget itself was not a huge document, but was unable to assist us further on how funds were allocated, whether funds would be used from reserves in respect of the chillers and busbar or further demands made. She referred all further budget and maintenance questions to Mr. Parojcic who she felt was better placed to answer them.

Mr. Parojcic.

43. Both Mr. Paul and Ms. Berwin mentioned that they relied heavily on Mr. Parojcic as manager of the estate to ensure that maintenance was undertaken and services provided as per the leases and budget. However, Mr. Parojcic had not been in post when the S.22 Notice was signed and was not in a position to answer questions on the historical disputes.

44. He described his previous experience at Bow Quarter and similar developments which included the co-ordination of services involving mostly mixed-use developments. He explained that his responsibilities included looking after contractors and visitors to smooth the management of the developments.

45. He confirmed that he had been interviewed by Mr. Paul who had showed him around the development and that subsequent to this he had been interviewed by Mr. Paul and Ms. Berwin. He confirmed that he had not experienced the situation where there was a liaison (Ms. Berwin) between the landlord and the manager prior to taking up this appointment.

46. The tribunal was disturbed to note that Mr. Parojcic was not able to confirm the service charge budget amounts for CR or WIQ; how they were apportioned between the sites, and he made an inaccurate guess as to the quantum involved. The tribunal would expect any manager appearing before it to have first-hand knowledge of the amount of service charge revenue due on any scheme as a matter of course.

47. He was able to inform the tribunal that the majority of his time was spent on CR because of the problems, the main ones of which were Windows; Chillers; Redecorations and Pathways. Although he said that the leases did

not specify a redecoration cycle for the common parts, in his opinion those works were overdue.

48. Mr. Parojcic confirmed that he had not been given a copy of the contract between MEL and CREM, and did not know what the terms of the agreement were, and also confirmed that he had not asked to see a copy. He had assumed that either Mr. Paul or Ms. Berwin would have told him of the contents, but had not.

49. In response to questioning, he confirmed that he had not carried out any performance appraisals even though he could see the benefit of them; but that he would plan to do them over the summer. There had been some issues with the concierge who had subsequently been suspended. The actual suspension had been undertaken by Mr. Paul with Mr. Parojcic carrying out the initial procedure, but the remainder had been outsourced to HR (Pinnacle) as he confirmed that he did not have any HR staff on site.

50. During her evidence, Ms. Berwin confirmed that a number of contracts required negotiation, when questioned, Mr. Parojcic confirmed that he had not had time to renegotiate all of them, but he had reviewed some and it was his intention to have all contracts aligned with service charge years, and all contractors have KPI's which would keep them 'keen'. He had no knowledge of whether the contracts had been renegotiated in the past and they were simply 'rolling on' when they expired.

51. He informed the tribunal initially that he had authority to spend up to £5,000, and that any works which were likely to cost in excess of this amount would be referred to the freeholder for permission. However later in his evidence, he confirmed that he was authorised to spend up to £1,500.00 without reference to the landlord. He also explained that he would obtain prices before proceeding with any works in any event. To illustrate this, he confirmed that the window repair works had required the freeholder's permission before the contract could be let.

52. He informed us that a spreadsheet from the credit control team was used to ensure that invoices were properly coded and allocated to the proper heads of expenditure. The responsibility for the checking of the spreadsheet lay with the credit control team, and he was therefore unable to explain why historic mis-postings had occurred.

53. He was able to confirm that he would sit down with the accountant and credit controller to determine what the expenditure trends and the likely future spend were so that a budget could be produced. He would then sit down with Ms. Berwin and Mr. Paul to run it through them, but as this was his first year in post and therefore his first budget and he would not be able to get an idea of expenditure/income until next year. He confirmed that the budgeting process had started at the beginning of the year, but this had not incorporated accurate estimates in relation to the electricity consumption for the chillers because as they had not been working for some time it was impossible to say how much they would cost to run, even though the contract negotiations had been completed.

54. On being taken through the various figures for service charge income and reserves and the likely expenditure on chillers, busbars, redecorations and pathways, Mr. Parojcic confirmed that if all of the works were undertaken in one year, then the reserve fund would reduce to approximately £186,000; he considered that to be too low and would therefore have to prioritise which works would be undertaken, for example, it might be necessary to split the redecoration works so that some could be deferred until the next financial year. It was important, in his view, that the major works were taken care of, but that there was a problem with the amount of reserves in that insufficient funds had been collected in the past and in his opinion £500,000 per annum should be collected to meet projected costs. He was not able to rule out the fact that demands for future service charges might have to increase.

55. He also confirmed that the PPM had not been shared with any of the leaseholders, but he did not see any reason why it should not have been; he done so on previous employments. With respect to the residents' possible request for the recognition of a residents' association he said that he would take guidance from Mr. Paul and then work with residents as necessary.

56. He confirmed that having been requested to do so by Mr. Paul, he had found the contractor who was carrying out the remedial works to the windows. He believed that about 11 flats were affected and that the 'ball-park' figure for the works was between £8 - £10,000 with about 1 – 1.5 days being spent on each flat. Half of this amount had been spent on Dr. Steele's flat; and therefore it was anticipated that some of the other flats might have similar, but less extensive problems. He confirmed that all of the budget would be spent, but that he did not have a precise cost for the works because a day-rate was being charged, and it was not entirely clear how many days would be necessary to attend to all of the windows. He was unable to assist with why the problems had taken so long to resolve as he had not been in post for long, and despite the Savills report suggesting that all windows be inspected, this had not been done even though he considered it would have been a sensible thing to do. He confirmed that he would write to all lessees again and ask them whether they were still experiencing problems with water ingress, as it was not possible to determine that all of the windows would have the same faults from looking at only one flat.

57. He also confirmed that he knew of the two reports that had been produced on the windows, and confirmed that no action had been taken to carry out works. He did not know whether this was because no-one had the 'gumption or confidence' to get this done, but as he was a 'let's get things done type of person' and repairs were now under way.

The Issues:

58. The tribunal has adopted the issues as identified on the Scott Schedule prepared by the applicants.

The Accounts:

59. It was the applicants' case that, despite making several requests of the landlord/managers, they had not been provided with copies of the service charge accounts until just prior to the hearing date. They did not consider that the S.20b notices served on them were sufficient.

60. The applicants also say that, despite making several requests, they were not supplied with copies of invoices and receipts for the relevant expenditure; and that they were only given full access to documents just prior to the hearing; and because of this, they were unable to avail themselves of the documents.

61. The respondents' say that because there had been a change of managing agents over the period in question, MEL had notified leaseholders that it was in the process of obtaining certified accounts and as soon as they were available they would be provided. It is accepted that fully certified accounts were provided by the hearing, and that purported S.20b notices for the years 2011 – 2014 inclusive had been supplied.

62. During the hearing, the tribunal asked Mr. Paul why it had not been possible to provide a reconciliation of the accounts without receiving the documents from Lee Baron and the response was that a balance could not be provided without knowing what the balance carried forward from LB was.

63. The tribunal accepts that it would be difficult for MEL to provide a fully balanced account, however, no evidence was supplied to show that residents were kept up to date of progress in obtaining information from LB, or that MEL suggested to the leaseholders that they could prepare an account based on the information that was available, which could be subsequently amended.

64. No evidence was provided to the tribunal that MEL or CREM took any legal action against LB as they could have done, or were particularly proactive in chasing the information required. Although copies of e-mails were provided which showed that some correspondence was exchanged, the tribunal considers that this was insufficient, given the amount of service charge payable in relation to this development, and the continued requests of the applicants for copies of the accounts.

65. The tribunal therefore finds in favour of the applicants in relation to this part of their claim that the landlord failed, following requests, to provide copies of the accounts in a timely manner. The tribunal does not make a determination whether or not the S.20b Notices were effective as it was not required to do so, and received no evidence on the matter.

Lack of invoices/receipts and other documents to support the claim.

66. The applicants claim that the respondents had failed to produce the receipts, invoices and other documents to support the accounts. In addition, such documentation that was supplied (such as bank statements) were so heavily redacted as to be unusable, and the applicants were unable to conduct their own reconciliations and investigations as to whether the service charges

were correct, correctly apportioned or reasonable. In addition, the applicants say that they had not been provided with information regarding the expenditure from the reserve accounts.

67. It is the respondents' case that such documents as were required under the under-leases had been supplied, and that any further documents would be provided once the outstanding accounts had been certified.

68. During his evidence Mr. Waterman who had certified the accounts confirmed that he had discovered mis-allocation of funds. Some £245,000 had been mis-allocated to the leaseholders' service charge expenditure, when it was actually the responsibility of the landlord. Following his certification, Mr. Waterman confirmed that this amount had now been credited to the leaseholders' funds.

69. The tribunal was concerned to learn that the landlord appeared to have utilised service charge monies belonging to leaseholders. This is, in our view, an indication that no real importance was placed on the service charges, and had MEL been more proactive in this matter, this situation would not have occurred. Mr. Parojcic informed us that the credit control department were responsible for checking the invoices and receipts against expenditure, and it is clear in our view, that this mis-allocation had not been properly checked.

70. The tribunal was also concerned to see that some of the bank statements actually provided to the applicants as part of the disclosure process were so heavily redacted that no useful information was shown. Although the respondents say that they complied with the terms of the under-leases, it is our view that the respondents did not comply with S.22 of the Landlord & Tenant Act 1985, and failed to provide sufficient, invoices, receipts and supporting documents to support any accounts.

71. The tribunal is satisfied that the landlord failed to comply fully with S.22, that leaseholders' had not been given sufficient information regarding the invoices and receipts relating to expenditure on the estate that would enable them to make informed decisions regarding their service charge expenditure.

Holding funds on trust:

72. It was the applicants case that MEL failed to hold the service charge funds and particularly the reserves on trust, and that the bank accounts held did not contain the word 'Trust' or 'Clients Account' to show that the money contained within them, did not belong to the landlord. The applicants relied on several requests, especially from Mr. Hillman where he continually requested confirmation of the status of the accounts, and considered that none of the responses was satisfactory.

73. The respondents say that the reserve funds were held in a separate account in accordance with the terms of the leases, and that statements showing this to have been the case had been supplied to the applicants.

Following further enquiries by the applicants, the respondents instructed solicitors to deal with the matter. They also rely on the fact that the statutory trust was created automatically and did not require the word Trust or Client to be included in an account name.

74. This episode reinforces the tribunal's view that MEL are not sufficiently experienced in property management to deal with simple requests such as this. Although the respondents have referred to the lease, they have not, in our view, taken into consideration the requirements of the RICS Code that requires a manager to demonstrate that funds are held in trust.

75. Although we also consider that some of the requests made by the applicants to be pedantic and in some respects confrontational, the respondents failed to recognise the importance to the leaseholders of knowing that their funds were properly protected. In the tribunal's view an experienced manager would have been able to resolve this matter without resorting to legal action, and the simple and cheapest solution would have been to have instructed the bank to include the word 'Trust' or 'Clients' Account' into the account name.

Failure to credit tenants with balancing credits in a timely manner.

76. In evidence, it appears to be accepted by the respondents that they did not credit the tenants' accounts until nearly three years' after the credits first appeared. In their response to the Scott Schedule, they only say that any credit arising once the accounts had been finalised would be dealt with then. However, credits due in respect of the service charge years 2011 were not made until 2014.

77. The tribunal considers that the respondent did not deal with the credits of which it was aware, in a timely manner and therefore finds in favour of the applicants in this matter.

Justification of reserve funds by reference to the PPM, and failure to budget with appropriate care:

78. It is the applicants' case that the respondents have failed to take account of a long term maintenance programme when determining the amount of reserve fund to be collected from leaseholders and that they did not prepare appropriate budgets especially in relation to a planned maintenance programme report in 2012, and garden path repairs in 2014/15.

79. In his own evidence, Mr. Parojcic admitted that the reserve funds were too low for the anticipated expenditure. A PPM was prepared by Savills in 2011, but this had not been actioned and had never been shared with the leaseholders so that they could be made aware of their liabilities in terms of maintenance. Mr. Parojcic himself said that no maintenance plan was in

place, and whilst he would have shared the report that had been prepared by Savills he could not explain why MEL had not done so.

80. It is inconceivable to this tribunal that a landlord or manager would have a professional planned maintenance plan produced and then not implement it for several years, take it into consideration when setting the reserve funds, or use it as a tool for consulting leaseholders with respect to their financial obligations under their leases.

81. It is accepted by the respondents that the cost of the path works were originally budgeted at £55,400 in 2014, increased to an approximate £111,000 in 2015/16. The applicants use this to demonstrate that insufficient care was taken by the respondent in preparing the budget for this item. The respondents say that the tenants own contractors' price was higher and that a demand for the new cost would be issued in 2015/16. The respondents also rely on the fact that various applications had been made to the tribunal to determine the reasonableness of various costs and in the main these were upheld by the tribunal at the time. The respondent also relies on the fact that accounts had not, when the Scott Schedule had been prepared, been finalised and any appropriate credits would be given at that time.

82. The tribunal's decision in relation to the financial management of the respondent is contained within the conclusion at the end of this decision.

Unreasonable standard of works:

83. The applicants rely on the works that have been undertaken to the chiller units to support their claim that the respondent has failed to ensure that tenants are only charged for works that have been carried out to a reasonable standard.

84. In 2010 works were carried out to the chillers at a cost to the leaseholders of some £446,000 on the claim by the respondents that those works would extend the life of the chillers by some 10 – 12 years. At that time, the leaseholders requested that complete replacement of the chillers be undertaken, but this was not accepted and those repairs were undertaken. However by 2013, further works were required because the chillers had not functioned properly since the repairs had been carried out. £63,000 was spent on running repairs between 2011 and 2013, and in 2013 MEL commissioned a report by ICS, which concluded that the chillers should be replaced. However this report was not actioned, two of the chillers broke down and could not be repaired. By 2014 the estimated cost of replacing the chillers had risen to £1,000,000 (in relation to the residential leaseholders' interests).

85. The tribunal heard from the respondents' expert Mr. Hamilton in relation to the chillers. Mr. Hamilton confirmed that he had not seen the refrigeration logs that would show how long the chillers had been in operation, and that his expertise was as an engineer and that he could not give evidence on the business viability of replacing/repairing the chillers.

86. Again in his opinion he said that residents expected cooling and that if the landlord had not repaired or replaced the chillers, they would not have that. That it would take approximately 12 – 16 weeks to replace the units, as against 2 – 3 weeks for repairs, and taking into consideration that they were entering into a new cooling season, from an engineering perspective the repair was the way to go to ensure that the service was available.

87. Dealing with the apparent inconsistency over the age of the chillers, he believed that the original fit of the building was 1998, when the units would have been manufactured but because the building was handed over later, commissioning would not have taken place until 2000. On this basis he said that it was not possible to say for certain when they were commissioned, but as residents were moving in in 2000, it would be reasonable to assume that commissioning was taking place at the same time. From this evidence we can deduce that the plant is at least 16 years' old.

88. When asked about the non-availability of the chillers, he was unable to comment as he did not know what the problems were and he did not ask. He was not aware that a report had been produced on the chillers in 2004, and could not confirm whether or not the chillers had been serviced between 2002 (when the Gross Fine report had been produced) and 2012 when he had evidence of servicing, but that it was clear from the inspection of the chillers and the various documents produced that they had been subjected to a high level of wear and tear, leading to a significant amount of work being required to bring the chillers back into use. He reiterated that he could not determine whether it would have been more appropriate for the chillers to be replaced and considered that this was not an operation of an engineer, but the responsibility of the management.

89. The Respondents rely on the decision of a differently constituted tribunal under reference LON/00BG/LSC/2015/0043 where that tribunal considered the cost of £1,000,000 to be reasonable.

90. This tribunal does not disagree with that decision. However what we are required to assess is whether it was reasonable for the respondents to continue to carry out repairs to plant in 2010, that had been commissioned at least 10 years' earlier, without any reference to whether it would be reasonable to carry out those repairs or whether replacement would be a more reasonable alternative.

91. No cost benefit analysis was undertaken by the respondents. We consider it unreasonable of the respondents not to carry out such an exercise before spending over £400,000 on repairs on plant that was over 10 years old.

92. This tribunal finds that had a cost:benefit been undertaken then the leaseholders could have been informed of the choices available to them, and the likely costs involved. Without this analysis, the landlord continued to repair equipment that at best was at the end of its useful life incurring substantial costs to the leaseholders that might have been avoided.

93. The tribunal finds in favour of the applicants in relation to this matter.

Unreasonable legal fees:

94. The applicants say that the respondents have not supported any claim for legal fees in the 2009/10 accounts with invoices or receipts to support that expenditure, with the exception of one for a relatively minor amount.

95. The respondents say that they have charged legal fees where the tribunals concerned have not made any Orders under S.20c, and that this is not a ground for making a S.24 application.

96. The tribunal disagrees with the respondents. Even where a tribunal makes no order under S.20c, it is incumbent on a landlord to provide copies of any invoices or receipts to support expenditure to be claimed as part of the service charge. In this case, the amounts total £300,586.00, and this tribunal considers it unreasonable for this amount to be included in the accounts without proper evidence of expenditure.

97. The tribunal therefore **Orders**, that the respondent shall provide copies of the relevant invoices and receipts to the Manager with the other documents so that it can be ascertained that these amounts are properly due and chargeable to the leaseholders.

Failure to repair and maintain:

98. The applicants rely primarily on the fact that it has taken the respondents nearly seven years to remedy faults with the windows to various apartments; the degradation of the pathways; stained brickwork and the general condition of the common parts of the building.

99. The landlord has not denied that the windows were not repaired in a timely manner. Mr. Parojcic in his evidence informed the tribunal that he could not understand why window repairs had not been undertaken and he had prioritised repairs since his appointment. He also considered that the common parts required attention, and he hoped to programme this work as soon as possible.

100. From its own inspection the tribunal was able to see the state of the common parts which were not in keeping with a high class block of flats. For example walls were scuffed and marked, carpets were taped down with Duct Tape in various areas and there was a broken glass table in the reception area of Berkeley.

101. The respondents deny the claim and say that they have in good faith maintained the building to a good standard, and that numerous inspections had been undertaken of the windows since 2011 to ascertain the remedial works required.

102. The tribunal finds that the respondents have actually only dealt with the major maintenance issues following the service of the S.22 Notice. Although they make reference to the number of inspections undertaken,

nothing was done until Mr. Parojcic arrived and organised for a contractor known to him to attend. It was unreasonable for the respondents to wait so long to carry out repairs, and their failure to maintain the block has had a detrimental effect on some of the leaseholders' occupation of their flats.

Lack of experience of MEL.

103. The applicants' case is that MEL is not properly staff and lacks the experience to manage prestigious blocks of flats such as CR. That they had failed, at the time of the service of the S.22 Notice, to produce accounts, invoices and receipts to support expenditure, failed to carry out repairs and maintenance (chillers, windows and pathways) and have imposed regulations prohibiting the leaseholders from using the common parts in breach of the lease and/or not in the interests of good estate management, for example the prohibition by MEL of the leaseholders using the common parts for meetings and gatherings on the basis that this was to the detriment of other estate users as a whole. No evidence was submitted that any other estate users objected to the use of any parts of the estate by any of the applicants or any other lessees and the tribunal therefore rejects this argument.

104. The respondents' case is the MEL are properly staffed, have carried out repairs as and when necessary and had by the time of the hearing, provided copies of all accounts and receipts etc. to support the service charge demands and expenditure.

105. The tribunal finds that MEL does not have sufficient staff or experience to manage the residential blocks at CR. They failed for several years to carry out repairs and maintenance and, from the evidence provided during this hearing, have disregarded professional reports provided to them with respect to a PPM, and have failed to properly engage with residents over the levels of service charge that were and are required to keep the estate in the condition expected of the applicants. It must also be pointed out to the applicants that their expectations, if realised, might result in substantial increases in service charge, but this tribunal would expect any manager to be able to put options to leaseholders so that they are able to make a choice. MEL has not engaged with leaseholders in relation to the management of this estate, a basic expectation of any manager in this tribunal's opinion.

106. The tribunal finds that, MEL has been unable to produce accurate financial information on time, including budgets and accounts, has not engaged with leaseholders and has a muddled hierarchy of command. This is demonstrated by Mr. Paul clearly stating that he would expect his manager to get on with the job, but Mr. Parojcic having to refer virtually all matters to either Mr. Paul or Ms. Berwin before any action could be taken. This has led to delays in repairs taking place with added frustration for the residents. Mr. Parojcic has not been provided with sufficient information to manage the estate, he was not aware of any contracts between CREM and MEL, and other contract documents which would form the basic information that any manager would require to do their job properly. Much emphasis has been placed on Mr. Parojcic's ability to manage the estate, but with the exception of

the window repairs, he has been provided with sufficient information to enable him to have any meaningful input into the management of the estate during the short period of his employment.

107. Given the circumstances of the various failures by the respondents to adequately manage the properties, and the lack of the respondents to recognise any failings in their management, the tribunal considers that it would be just and convenient for a manager to be appointed.

108. Mr. Coates of HML Andertons has been put forward by the applicants as their chosen manager. It was evident to the tribunal that Mr. Coates is really a service charge manager, and the tribunal considers that this is actually what the estate required, a manager who can set budgets, arrange for repairs and maintenance and services to be provided, and then provide financial information to the leaseholders and involve them in decisions involving their homes. Mr. Coates does not however have experience of commercial property management and therefore the tribunal **Orders** that the revised draft management order, be drafted so as to exclude the management of the commercial properties from Mr. Coates' control, save where that management relates to the shared services on the estate.

109. The respondents also object to Mr. Coates being given the power to grant licences to assign/alter that currently require the consent of the landlord, due to the fact that there is a dispute between the landlord and Circus Apartments regarding an assignment and leaseback to an off-shore company that is opposed by the landlord. The tribunal considers that these matters should not fall within the functions of Mr. Coates because he has no experience of such matters and provided no evidence to the tribunal that he would be able to deal with such requests without making reference to legal advisers and thus incurring costs. The tribunal considers that although the Circus Apartment lease does allow the flats to be let on individual long leases, they were not at the time of making this order. The apartments are currently let on a commercial basis to short-term clients. The Order appointing Mr. Coates' must therefore extend to the provision of services, repairs and maintenance to the Circus Apartment block and communal areas, including collection of arrears as necessary, but no further. All requests for licences to assign and alter therefore remain with the landlord.

110. The draft management order shall therefore be amended by the applicants to reflect the variations to the powers of the manager in relation to the Circus Apartment flats.

111. The draft shall also be amended, particularly in relation to (6), page 7 (a) and 6(vi) (d) and (e) to reflect the dates 1st October 2016; with 6(a), (vi) (f) the date of 31 October respectively.

112. The manager is to provide the tribunal with a report of his progress in relation to the management of these properties on or before 31 March 2017.

113. Finally, the tribunal recognises that the applicants made other allegations of the respondents in this application, but is satisfied that sufficient breaches of the RICS Management Code have already been determined that it is not necessary to make reference to each and every breach relied on.

Tribunal: **Date:** 5 August 2016.

Ms. A. Hamilton-Farey

Mr. L. Jarero BSc, FRICS.